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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

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No.

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**JOSEPH J. BODELL, EXECUTOR, ESTATE OF
FREDERICK BODELL,**

Petitioner,

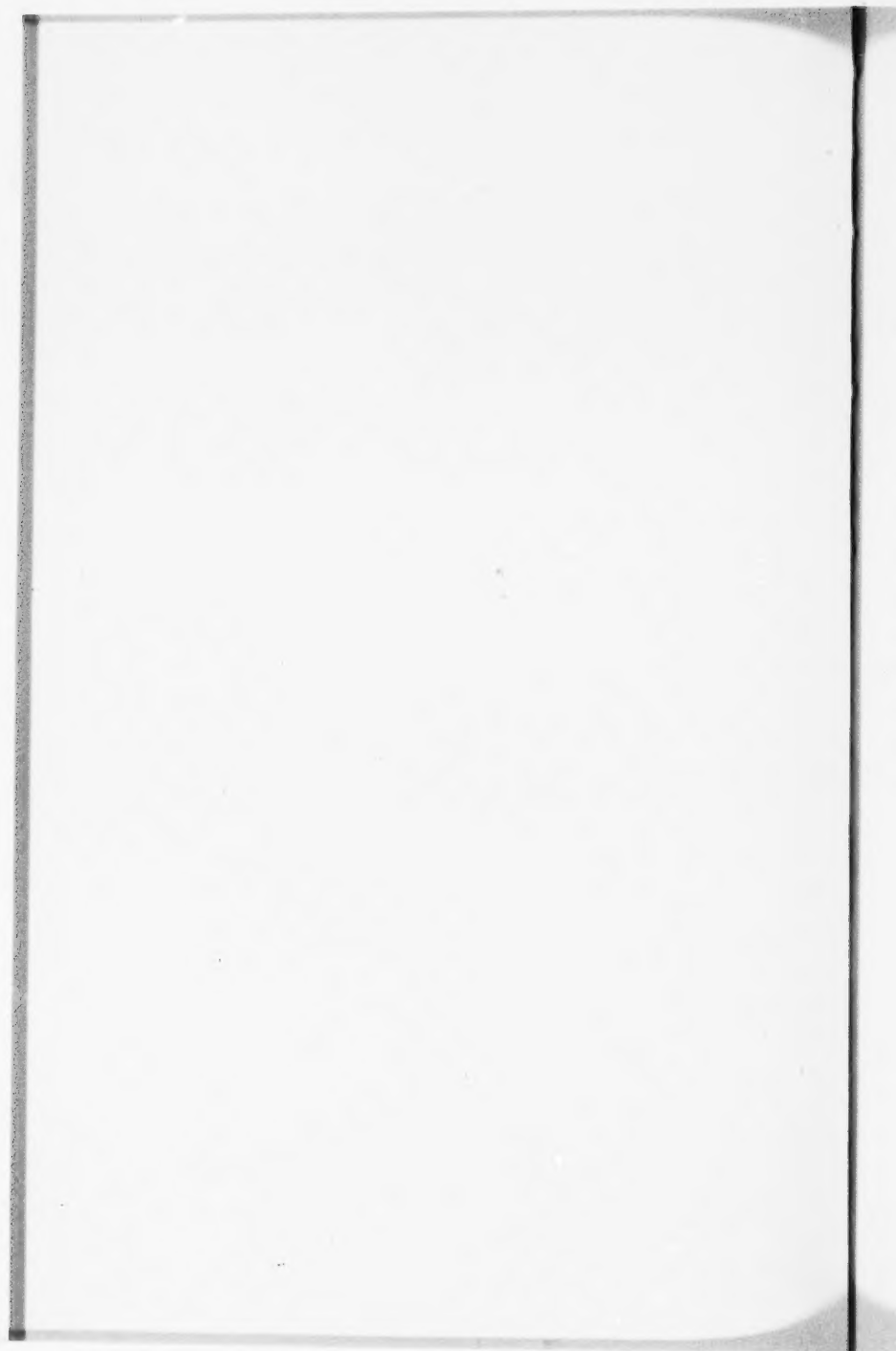
v.

COMMISSIONER OF INTERNAL REVENUE.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT.**

IRA LLOYD LETTS,
Counsel for Petitioner.

**ANDREW P. QUINN,
RICHARD F. CANNING,**
Of Counsel.



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SUPREME COURT OF THE UNITED STATES

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No.

JOSEPH J. BODELL, EXECUTOR, ESTATE OF
FREDERICK BODELL,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

The petitioner, Joseph J. Bodell, Executor under the will of Frederick Bodell, a citizen of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit in the above case.

Jurisdiction.

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938. The judgment of the Circuit Court of Appeals was entered on November 3, 1943.

{ Question Presented.

Whether there should be included in the gross estate of Frederick Bodell for Federal estate tax purposes the proceeds of two life insurance policies taken out by him upon his own life prior to the effective date of the Revenue Act of 1918.

Statutes Involved.

Revenue Act of 1926, c. 27, 44 Stat. 9:

Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(h) Except as otherwise specifically provided therein, subsections (b), (c), (d), (e), (f), and (g) shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

Statement of the Case.

Frederick Bodell died on June 20, 1938, a resident of Providence, Rhode Island. The petitioner is the executor under his will (R. 24).

At the date of death of the decedent there were in effect upon his life eight policies of insurance, the proceeds whereof paid at his death were \$120,260.07 (R. 24), all of which are

now conceded by the petitioner to be includible in the gross estate with the exception of the following:

1. Policy No. 178772, Provident Mutual Life Insurance Co. of Philadelphia. This was an endowment policy in the face amount of \$5,000, taken out by the decedent on October 31, 1911. When originally issued the policy was payable to the decedent on October 31, 1955, if living, otherwise to his mother, if living, otherwise to his executors, administrators or assigns. On May 5, 1918 the designation of the insured's mother as beneficiary was irrevocably changed to Albina Elise Bodell, wife of the insured. The proceeds paid at death were \$5,017.10. (Stipulation of Facts, Exhibit A, R. 25, 27).

2. Policy No. 398704, Massachusetts Mutual Life Insurance Co. This was an ordinary life policy in the face amount of \$10,000 taken out by the decedent on March 1, 1917. When originally issued, the policy was payable to the insured's mother. On October 6, 1917, the beneficiary was changed to Albina Elise Bodell if living at the death of the insured, otherwise to his executors, administrators or assigns. The decedent reserved the right to change the beneficiary at any time. (Stipulation of Facts, Exhibit H, R. 26, 32).

The decedent paid the premiums on each of the above policies.

Rulings of the Court Below.

The Circuit Court of Appeals, affirming the United States Board of Tax Appeals (now the Tax Court of the United States), held that the proceeds of the policies were includible in the gross estate. The Court rejected the contention of the petitioner that under the authority of *Lewellyn v. Frick*, 268 U. S. 238, *Bingham v. United States*, 296 U. S. 211, and *Industrial Trust Co. v. United States*, 296 U. S. 220, subsections (g) and (h) of section 302 of the Revenue Act of 1926 are not to be construed as applicable to insurance policies

issued prior to the effective date of the Revenue Act of 1918. The Court held that in view of the decisions of this Court in *Helvering v. Hallock*, 309 U. S. 106, and *United States v. Jacobs*, 306 U. S. 363, the earlier cases mentioned were no longer controlling.

Reasons for Granting the Petition.

The decision of the Circuit Court of Appeals is in conflict with applicable decisions of this Court.

In *Lewellyn v. Frick*, 268 U. S. 238, it was held that the insurance section of the act would not be construed as applicable to policies issued prior to the passage of the 1918 Act since to construe the section retroactively would raise grave doubts as to its constitutionality. The principle of statutory construction so enunciated in the *Frick* case was reaffirmed by a unanimous court in *Bingham v. United States*, 296 U. S. 211. In *Industrial Trust Co. v. United States*, 296 U. S. 220, the principle of the *Frick* case was again held controlling in a case where the policies antedated the passage of the Revenue Act of 1926, section 302 (h) of which was claimed by the government to make the insurance section of the law expressly retroactive. The decisions in these cases constitute an application of a long-settled rule of construction that statutory provisions are to be construed if possible in such a way as to avoid grave doubts as to their constitutionality. The authority of these cases has never been questioned by later decisions of this Court and the cases are controlling.

Conclusion.

For these reasons it is respectfully submitted that this petition should be granted.

IRA LLOYD LETTS,
Counsel for Petitioner.

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